IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION.	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:04-CV-85 (DF)**
	§	
SMALL VALUE PAYMENTS COMPANY,	§	
	§	
	§	
Defendant.	§	

ORDER

Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for Assignment of Duties to United States Magistrate Judges, Defendant Small Value Payments Company's Motion to Compel Amended Preliminary Infringement Contentions (Docket Entry # 26) was referred to the Honorable Caroline M. Craven for the purposes of hearing and determining said motion. The Court, having reviewed the relevant briefing, is of the opinion the motion should be **DENIED WITHOUT PREJUDICE**.

Plaintiff DataTreasury Corporation ("Plaintiff") brings this cause of action against Defendant alleging infringement of U.S. Patent No. 5,910,988 ("the '988 patent") and U.S. Patent No. 6,032,137 ("the '137 patent") (collectively, the "patents-in-suit"). Small Value Payments Company ("Defendant") generally denies these allegations and asserts various affirmative defenses, which include non-infringement, invalidity, and inequitable conduct. Additionally, Defendant asserts counterclaims against Plaintiff for a declaratory judgment of non-infringement and invalidity of the patents-in-suit.

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In the present matter before the Court, Defendant moves the Court for an Order compelling Plaintiff to serve preliminary infringement contentions that satisfy the requirements of Rule 3-1 of this Court's Patent Rules. According to Defendant, many of Plaintiff's contentions do not identify any accused method or process, and Plaintiff's contentions lack meaningful identification of each asserted claim element and claim term within the accused instrumentality. Plaintiff opposes the motion, asserting its preliminary contentions are as specific as possible given they were submitted before significant discovery was completed. Plaintiff states the docket control order anticipates that discovery will be conducted and that the final infringement contentions, due four weeks after the claim construction ruling, will provide greater detail.

On May 25, 2006, the Court granted Defendant's agreed motion to consolidate cases and ordered this matter consolidated with *DataTreasury Corp. v. Wells Fargo & Co., et al.* (Cause No. 2:06-CV-72). The Court also vacated the July 27, 2005 Scheduling Order governing this case and canceled the Markman hearing scheduled for June 8, 2006. On June 2, 2006, the Court granted Viewpointe Archive Service, LLC's agreed motion to consolidate cases and consolidated *DataTreasury Corp. v. Viewpointe Archive Services, LLC* (Cause No. 2:05cv290) with *DataTreasury Corp. v. Wells Fargo & Co., et al.* (Cause No. 2:06-CV-72). The Court vacated the scheduling order governing the *Viewpointe* case and canceled the Markman hearing.

On June 21, 2006, the Court granted City National Bank and City National Corporation's unopposed motion to consolidate cases and ordered the consolidation of *DataTreasury Corp. v. City National Bank and City National Corp.* (Cause No. 2:06cv165) with *DataTreasury Corp. v. Wells Fargo & Co., et al.* (Cause No. 2:06cv72). The Court vacated its Notice of Scheduling Conference, Proposed Deadlines for Docket Control Order, and Discovery Order, entered June 9, 2006 in Cause

No. 2:06cv165.

The issues raised by Defendant's motion are impacted by the consolidation of this matter with the other *DataTreasury* cases referenced above. The parties' briefing does not take into consideration the effect of the consolidation. Thus, the Court finds that Defendant's motion should be denied without prejudice subject to refiling in the consolidated case.

ORDERED that Defendant Small Value Payments Company's Motion to Compel Amended Preliminary Infringement Contentions (Docket Entry # 26) is **DENIED WITHOUT PREJUDICE**.

SIGNED this 28th day of August, 2006.

CAROLINE M. CRAVEN
UNITED STATES MAGISTRATE JUDGE